

This is because the guidelines require that a “criminal history category shall be *the greater of*: (A) the criminal history category determined under Chapter Four, Part A (Criminal History); or (B) criminal history Category V.” U.S.S.G. § 4B1.5(a)(2) (emphasis added). In this case, defendant’s criminal history category was V, because V was greater than the criminal history category III classification defendant would have received if the court had determined defendant’s criminal history under Chapter Four, Part A. (PSR ¶ 46.) If § 4B1.5(a)(2) did not exist, Amendment 821 would reduce defendant’s total criminal history points from four to two, which would lower his criminal history category from III to II. However, § 4B1.5(a)(2) does exist, and it demands criminal history category V in this case, whether defendant’s criminal history category is III or II. In short, defendant cannot benefit from Amendment 821 since a reduction from four to two criminal history points does not affect his criminal history category.

For these reasons, defendant’s motion for a reduction in sentence pursuant to Amendment 821 is **DENIED**. (DE # 62.)

SO ORDERED.

Date: February 6, 2024

s/James T. Moody
JUDGE JAMES T. MOODY
UNITED STATES DISTRICT COURT